

IN THE SUPREME COURT OF THE STATE OF NEVADA

WASHOE COUNTY SHERIFF'S
DEPUTIES ASSOCIATION,
Appellant,
vs.
WASHOE COUNTY,
Respondent.

No. 44866

FILED

SEP 29 2006

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF DEPUTY CLERK

ORDER OF REMAND

This is an appeal from a district court summary judgment in a case involving the confidentiality of police internal affairs files. Second Judicial District Court, Washoe County; James W. Hardesty, Judge.

The parties are familiar with the facts, and we do not recount them except as pertinent to our disposition.

As an initial matter, we address the contentions of the appellant Washoe County Sheriff's Deputies Association that the district court erred in converting the motion to dismiss to a motion for summary judgment; this Court may disregard this issue on appeal because appellant cited no relevant authority in its brief to the court.¹ Nonetheless, NRCP 12(b)(5), under which the respondent Washoe County originally brought its motion to dismiss, provides that if "matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment[.]"

¹Montes v. State, 95 Nev. 891, 897, 603 P.2d 1069, 1074 (1979) ("Since appellant has cited no authorities in support of his positions, we need not consider them.").

We hold that here, where the district court not only permitted but specifically requested supplemental material not included in the pleadings, the conversion to a summary judgment motion was proper.²

This court reviews an order granting summary judgment de novo and without deference to the lower court's findings.³ Summary judgment will be upheld when, after reviewing the record in a light most favorable to the nonmoving party, there remain no genuine issues of material fact and the moving party is entitled to judgment as a matter of law.⁴ Additionally, this court's review of a district court's interpretation of a statute is de novo.⁵

Appellant contends that the information contained in the Office of Professional Integrity ("OPI") file is a confidential employee personnel file pursuant to Washoe County Code 5.227 ("WCC")⁶ because it can lead to punitive action or discipline against the deputy investigated. Appellant further contends that the district court essentially declared the WCC null and void when it refused to find that the OPI file was confidential under the WCC. Additionally, appellant appears to argue

²See also Las Vegas Downtown Redev. Agency v. Pappas, 119 Nev. 429, 439, 76 P.3d 1, 8-9 (2003).

³Caughlin Homeowners Ass'n v. Caughlin Club, 109 Nev. 264, 266, 849 P.2d 310, 311 (1993).

⁴Wood v. Safeway, Inc., 121 Nev. ____, ____, 121 P.3d 1026, 1031 (2005).

⁵State, Div. of Insurance v. State Farm, 116 Nev. 290, 293, 995 P.2d 482, 484 (2000).

⁶WCC 5.227 states in pertinent part that "[t]he following records are confidential and not open to the public . . . (d) employee personnel files[.]"

that even under the Donrey of Nevada, Inc. v. Bradshaw⁷ balancing test, which weighs “privacy or law enforcement policy justifications for nondisclosure against the general policy in favor of open government,” the OPI file in this case should not be disclosed. Specifically, appellant contends that the OPI file contains statements from law enforcement personnel that were compelled under Garrity v. New Jersey,⁸ which held that such compelled statements cannot be used in criminal actions. Appellant argues that disclosure of such statements could lead to a civil action against the deputy who was the subject of the OPI file in this case.

Respondent argues that because neither the WCC nor any other law makes OPI files confidential, such files are subject to the provisions of NRS 239.010⁹ and the Donrey balancing test.

We conclude that the district court erred in summarily finding that the entire OPI file in this case was not a confidential employee personnel file under the WCC. The district court erred in not making a finding as to the confidential nature of each individual document contained within the OPI file. Thus, it was error for the district court to find that the whole OPI file was not a confidential employee personnel file without making a finding as to the confidential nature of each individual document contained within the OPI file.

⁷106 Nev. 630, 636, 798 P.2d 144, 148 (1990).

⁸385 U.S. 493, 499-500 (1967).

⁹NRS 239.010(1) provides that records of a governmental entity that have not otherwise been declared by law confidential must be open to the public.

Accordingly, we conclude that the district court must determine whether each individual document contained within the OPI file is a confidential employee personnel document under the WCC. If the district court finds that a particular document in the OPI file is not a confidential employee personnel document, then that document is still subject to the Donrey balancing test.

As to appellant's argument that statements compelled under Garrity should not be disclosed due to concerns about civil actions, respondent correctly points out that Garrity only provides protection from the use of such statements in criminal actions and not civil actions. Additionally, respondent correctly notes that here the district court did not declare that the OPI file was subject to public disclosure and, thus, issues relating to the public policy of disclosing Garrity statements can still be challenged on an individual basis in the district court.

As to appellant's argument that the district court essentially declared the WCC null and void, in light of our conclusion that the district court must make a finding as to whether any individual documents contained within the OPI file are considered as confidential employee personnel documents under the WCC, that issue is moot. Accordingly, we

ORDER this matter REMANDED to the district court for proceedings consistent with this order.

Douglas, J.
Douglas

Becker, J.
Becker

Parraguirre, J.
Parraguirre

cc: Second Judicial District Court Dept. 9, District Judge
Patrick O. King, Settlement Judge
Michael E. Langton
Washoe County District Attorney Richard A. Gammick /Civil
Division
Washoe District Court Clerk